IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

OP.No. 32138 of 1999(A)

PETITIONER:

N.RAJENDRA BABU,
P.C.NO.1244, C.B.C.I.D., SIG UNIT,
MUTTADA, TRIVANDRUM.

BY ADV. SMT.V.P.SEEMANDINI
SMT.K.R.KRISHNAKUMARI

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE SECRETARY TO GOVT. HOME DEPT., SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR GENERAL OF POLICE, TRIVANDRUM.

3. THE SUPDT. OF POLICE, CB CID SIG, MUTTADA P.O, TRIVANDRUM.

4. C.YOHNA, BRANCH SUPDT. POLICE HEAD QUARTERS, TRIVANDRUM, 'SHINE' TC NO.48/189(1), PRA-22, PAZHAMCHIRA, POONTHURA P.O., TRIVANDRUM.

ADDITIONAL 5TH RESPONDENT:

5. SUPDT. OF POLICE, PATHANAMTHITTA.

(R5 IMPLEADED AS PER ORDER ON CMP NO.2891802 DTD.3.7.2002.)

BY GOVERNMENT PLEADER SHRI. RAVIKRISHNAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.32138/99.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE ORDER DTD.7.11.89.

P2. COPY OF THE REPRESENTATION DTD.2.12.89 BEFORE R2.

P3. COPY OF THE REPRESENTATION DTD.20.12.89 BEFORE R2.

P4. COPY OF THE -DO- DTD. 12.9.90 BEFORE R2.

P5. COPY OF THE GOVT. ORDER DTD.23.11.99.

P6. COPY OF THE ORDER DTD.7.8.90 ISSUED BY THE COMMISSIONER OF POLICE, TRIVANDRUM CITY.

P7. COPY OF THE ORDER DTD.5.6.93 BY DY. INSPECTOR GENERAL OF POLICE.

P8. COPY OF THE ORDER DTD.25.9.98 ISSUED BY -DO-

P9. COPY OF THE GOVT. ORDER DTD.7.6.68.

P10. COPY OF THE SELECT LIST DTD.30.5.2002 ISSUED BY S.P. PATHANAMTHITTA.

P11. COPY OF THE REQUEST OF THE PETITIONER BEFORE KAP 3RD BATTALION COMMANDANT DTD.10.7.89.

P12. COPY OF THE REQUEST DTD.15.11.89 BEFORE -DO-

sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

==========

O.P.No.32138 of 1999

==========

Dated this the 26th day of March, 2007

J U D G M E N T

The petitioner entered service as a Police Constable on 11.9.1984 in the KAP battalion. He was promoted to the post of Havildar on 2.10.1988. As per the Government order on the subject, the Havildars who have completed three years of service in KAP battalion can opt for transfer to the District Armed Reserve Police on condition that he would be reverted as Constable before such transfer and would be the junior most on the date of joining the District Armed Reserve Police. The petitioner was so transferred to the Armed Reserve Police in December, 1989. According to the petitioner, this was not on the basis of any request or willingness expressed by the petitioner, but done by the respondents without obtaining any willingness from the petitioner. He submits that he was in fact

coerced into filing a willingness against which he filed Exts.P2, P3 and P4 complaints dated 2.12.1989, 20.12.1989 and 12.9.1990 respectively. While working in the Armed Reserve Police, he was again promoted to the post of Head Constable on 5.12.1990. Thereafter, he was again reverted to the post of Police Constable and posted in the Local Police, which was also conditions for transfer to the local police. According to the petitioner, while he was so working as Police Constable in the Local Police several persons junior to him in the KAP battalion were given promotion ahead of the petitioner. The petitioner submits that against this, he filed representation dated 10.5.1992 requesting promotion as Sub Inspector. According to the petitioner, even thereafter, several junior Havildars were promoted as S.I. in the year 1993 and he again filed a representation dated 12.6.1993. In the above circumstances, the petitioner has approached this court seeking the following reliefs:

"a) to issue a writ of certiorari or other appropriate writ, order or direction to quash Ext.P5 Govt. Order since the same is issued in violation of the petitioner's fundamental right under Article 14 and 16 of the Constitution.

b) to issue a writ of mandamus or appropriate writ, order or direction directing respondents 1 to 3 to promote the petitioner to one among the existing post of AP Sub Inspector with notional seniority in that cadre from the date on which Police Constables immediately junior to the petitioner in the KAP Batalian recruited in the year 1984 were promoted as AP Sub Inspectors.

c) to issue a writ of mandamus or other appropriate writ, order or direction directing the respondents 1 to 3 to count the petitioner's seniority in the Havildars cadre in the KAP battalion and to give him consequential promotion to the post of AP Sub Inspector of Police with all monetary benefits arising therefrom."

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. In so far as the challenge against Ext.P5 Government order is concerned, that has been in existence for years together and the petitioner himself has availed of the benefit of the same. That being so, he cannot now turn around and challenge that Government order when he found that, that is to his detriment in the matter of promotion. The contention of the petitioner that he has not given any willingness for being

transferred to the District Armed Reserve Police is found to be quite untrue in view of the willingness found in the petitioner's service book, which has been produced by the learned Government Pleader as directed by me. The petitioner now does not dispute that he has in fact given such willingness, but according to him, that willingness was given under coercion. This contention cannot be countenanced after a period of 10 years. Even assuming that Exts.P2 to P4 have been received by the respondents for which there is no materials before me, after having done nothing about this for a period of 10 long years, it is too late in the day to contend that the willingness was obtained by coercion which itself is not supported by any tenable material on record. Once the petitioner has given his willingness, he cannot now turn around and say that he should be given promotion considering his seniority in the KAP Battalion. Therefore, the petitioner cannot get any relief in this writ petition in that regard.

4. The petitioner has filed CMP No.28919/2002 contending that several of his juniors who joined the Local Police after he joined the Local Police have been given promotion ahead of him. However, the petitioner has not chosen to challenge any promotions in preference to the petitioner in spite of producing Ext.P10 select list along with CMP No.28919/2002. At this point of time, I am not inclined to consider that claim since the same also is hopelessly belated. Original petition is therefore dismissed, but without any order as to costs.

Interlocutory applications stand closed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

==========

O.P.No.32138 of 1999

==========

26th March, 2007

J U D G M E N T